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Reasons for Decision

Syndicat des technicien(ne)s et artisan(e)s du réseau
français de Radio-Canada (STARF),

applicant,

and

Canadian Broadcasting Corporation,

employer,

and

Canadian Union of Public Employees (CUPE),

interested party.

Board File: 27966-C

Neutral Citation: 2011 CIRB 597

June 22, 2011

A panel of the Canada Industrial Relations Board (the Board) composed of Ms. Louise Fecteau, Vice-Chairperson, and Messrs. Daniel Charbonneau and Patrick J. Heinke, Members, considered the above-noted application. Hearings were held in Montréal on February 3, March 21 and May 5, 2011.

Appearances

Mr. Daniel Carrier, for the Syndicat des technicien(ne)s et artisan(e)s du réseau français de Radio-Canada (STARF);

Ms. Linda Facchin, for the Canadian Broadcasting Corporation;

Mr. Michel Cohen, for the Canadian Union of Public Employees.

These reasons for decision were written by Ms. Louise Fecteau, Vice-Chairperson.

I-Nature of the Application and Background

[1] The Syndicat des technicien(ne)s et artisan(e)s du réseau français de Radio-Canada (STARF) filed an application pursuant to section 18 of the *Canada Labour Code (Part I-Industrial Relations)* (the *Code*) to have the Board determine to what bargaining unit the positions of employees working at the Technical Store should belong. The Technical Store is described by the employer as follows:

The Technical Store is a customer service group whose function is to provide logistical and organizational support for in-house and outside productions by the CBC French network's Technical Production. Its primary mandate is to meet equipment and vehicle needs for all types of productions in accordance with the CBC's safety standards. Customer service and satisfaction are our central concerns and our core purpose.

(translation)

[2] Based on the submissions of the Canadian Union of Public Employees (CUPE), the Canadian Broadcasting Corporation (the CBC) and STARF, only the positions held by Messrs. René Plamondon, Lucien Charbonneau, Abdiel Quintero and Benoit Lefebvre are at issue here. The other positions mentioned in the application, that is, the positions of semi-trailer driver and TV assistant, are not being contested by CUPE and continue to be covered by STARF.

[3] Prior to January 2010, the employees in question (except for Mr. Benoit Lefebvre) held technical supply technician positions and were members of STARF. They now hold production equipment assistant (translation) positions and are members of CUPE. These latter positions are the ones at issue in this matter. According to STARF, although the employees concerned now hold production equipment assistant positions, they perform basically the same work as when they held technical supply technician positions. Mr. Benoit Lefebvre, for his part, previously held a truck driver position, which came under STARF. He was assigned to a production equipment assistant position by the CBC as an accommodation measure related to medical restrictions.

[4] Of note is that Messrs. Plamondon, Charbonneau and Quintero obtained their production equipment assistant positions after the CBC posted the positions and all three applied for them.

II-Bargaining Certificates

[5] On August 7, 1995, the Board certified STARF as the bargaining agent for a unit comprising:

all technical, production and trade personnel, excluding supervisors and similar personnel.

(translation)

[6] On August 7, 1995, the Board certified CUPE as the bargaining agent for a unit comprising:

all distribution and administrative support personnel, excluding supervisory and similar personnel.

(translation)

III-The Evidence

[7] Below is a summary of the testimony that is pertinent for determining the issue in this matter. No witnesses were called by CUPE.

A-STARF

[8] The first witness called by STARF was Mr. Plamondon, who has worked for the CBC since 1998. He was initially hired as a Class I truck driver and was a member of STARF. He started working at the Technical Store in 2001, as an assistant and then as a technical supply technician. He stated that his duties had changed in January or February 2010, at about the same time that the Technical Store employees were transferred to the CUPE unit. He indicated that he has not been responsible for supply since his transfer.

[9] As a supply technician, before his transfer, his duties consisted in supplying all the equipment required for the production of CBC programs on sets and on location for special events, such as at the Olympic Games and the Grand Prix.

[10] The supplies required ranged from simple sticky tape to audio consoles, microphones, cameras, tripods, and so on—in other words, everything required by CBC program production teams. Mr. Plamondon explained that he would receive equipment orders from a clerk or equipment assistant, whose position came under CUPE. He added that, prior to becoming a production equipment assistant in January 2010, his duties had also involved installing equipment at production sites. Additionally, he had often been called on to drive the trucks carrying the said equipment.

[11] Mr. Plamondon indicated that his work schedule had also changed since January 2010. Whereas he had previously worked “on the floor” (translation) one week out of two, he now spends 80% to 90% of his time “on the floor.” The other 10% to 20% of his time is spent on office and computer work. Since January 2010, he has worked 7.5 hours a day, five days a week, instead of the 10 hours a day, four days a week, that he worked previously.

[12] During cross-examination, Mr. Plamondon admitted that, at the beginning of 2010, he had had to apply for the position of clerk at the Technical Store, but could have chosen to remain in the STARF unit, as a supply technician. He added that he had not suffered any wage loss. Mr. Plamondon also admitted that, prior to 2010, special events had been handled by a service other than the Technical Store and that the workers involved had been covered by the bargaining certificate held by CUPE. According to the witness, the special events unit had been integrated with the Technical Store two or three years ago but each had retained its physical premises while sharing the equipment.

[13] Mr. Plamondon was also cross-examined concerning an assistant technician job description entered into evidence by STARF. When questioned about the job description, dated March 30, 2009, he admitted that, as a production equipment assistant, he does not perform a number of the duties in that job description, including those related to equipment installation on location or on sets, and has not performed them since being transferred to the CUPE unit.

[14] The second witness was Mr. Benoit Celestino, who has been National President of STARF since April 2010 and was its Secretary-General prior to that. Mr. Celestino indicated that he had participated directly in a job evaluation process carried out from 2003 to 2009 that had involved, among other things, the job descriptions of all positions covered by the STARF unit. He indicated that the CBC would send him the job descriptions, which would be reviewed with the employees, and then feedback would be sent to the CBC. He stated that he had reviewed over 108 positions.

[15] In regard to the assistant technician position, the job description for which was entered into evidence, Mr. Celestino admitted that Mr. Plamondon, the first witness, had performed the duties set out in the job description in his capacity as supply clerk, but that there had not been an assistant supply technician position at the CBC's French network (the SRC) since January 2010. He indicated that, following the job review, the positions of TV assistant, TV assistant and driver, supply assistant, operations assistant and assistant operations technician had been merged into one position, that of assistant technician.

[16] Mr. Celestino indicated that there had been no discussions with CUPE concerning any overlap of duties. He had learned of the transfer of the Technical Store positions at a meeting with the CBC on October 27, 2009. The transfer had been scheduled to take place on November 1, 2009, but had actually taken place in January 2010.

[17] Mr. Celestino stated that the duties performed by Technical Store employees were of a technical nature and the positions should fall under STARF.

[18] The third witness was Mr. Adrien Caissie, who has held various union positions with STARF, including that of National Secretary-Treasurer. He stated that he had learned of the transfer of the Technical Store positions from STARF to CUPE at a meeting with the CBC on October 27, 2009. He described how the meeting had unfolded. He emphasized that the meeting had lasted between one and two hours. According to the witness, Mr. Vaillant had been present to represent the CBC and had been accompanied by Ms. Linda Dion from Human Resources. They had explained the structural changes that the CBC planned to make, including the creation of new positions and the

transfer of employees from the STARF unit to the CUPE unit. According to Mr. Caissie, the question of technical support had been discussed, but only vaguely.

B--The CBC

[19] The CBC's first witness was Mr. François Vaillant, who has held the position of director of media infrastructure for six years. He indicated that he was responsible for some 135 employees, including 14 belonging to the CUPE unit, 8 to the Association of Professionals and Supervisors of the Canadian Broadcasting Corporation (the APS), and 110 to the STARF unit.

[20] Mr. Vaillant explained the procedure he had followed for the Technical Store changes. He indicated that an analysis of the duties performed by Technical Store employees had revealed a lack of fluidity within the unit and a great deal of frustration on the part of customers. He stated that the problem had been due to the fact that both CUPE and STARF members handled the equipment. For instance, STARF members handled orders received from CUPE members and vice versa. He stated that he had noted other problems, such as the fact that casual workers were constantly being used to fill in for STARF workers because they had to be able to both act as drivers and work on the sets. Mr. Vaillant mentioned that he had brought these matters to the attention of Human Resources around the fall of 2009 and had suggested that the Group 14 (CUPE) positions be merged with the Group 4 (STARF) positions to form one seamless, fluid and stable group to manage the equipment for the production of the SRC's programming.

[21] Mr. Vaillant provided explanations concerning the document entitled "Technical Store Structural Changes" (translation), which was entered into evidence. This document was presented and distributed to those who had attended the meeting of October 27, 2009, and to employees the next day, on October 28, 2009. According to the witness, the specific purpose of the changes had been to create a core group of employees to deal only with equipment management. Mr. Vaillant stated that a number of employees had expressed concerns, particularly with respect to how such changes would affect their wages and benefits.

[22] Mr. Vaillant stated that the changes had compelled the CBC to eliminate certain positions covered by the STARF unit and create new positions covered by the CUPE unit. The workers affected by the changes had all been invited to apply for the new positions. According to the witness, Messrs. Plamondon, Charbonneau and Quintero from STARF had applied for and won those positions.

[23] Mr. Vaillant explained that, since the changes had been introduced, CUPE members received all orders directly from the production teams and only STARF members handled all equipment repair work. He stated that the Technical Store staff is now more stable and staff members are no longer sent out to the sets, as was the case before.

[24] During cross-examination, Mr. Vaillant explained that, prior to the restructuring, Group 14 (CUPE) members and Group 4 (STARF) members worked on separate floors although, in his view, they all provided support for the CBC's in-house and outside productions. Prior to the changes, orders were sent to a member of Group 14 (CUPE), who checked on availability and reserved the equipment and then sent the order on to a Technical Store technician.

[25] Now, the Technical Store clerk assumes full responsibility for ensuring that all of the equipment is available, and the employees who are now CUPE members are responsible only for handling the equipment. Mr. Vaillant added that the changes mean that all orders placed by program producers go to the same place, the Technical Store. He added that CUPE members are still responsible for special events and it is in fact this model that he had applied to former members of STARF who were now CUPE members.

[26] The CBC's second witness was Ms. Lynda Dion, who has worked at the CBC for 33 years and currently holds the position of senior human resources advisor. She stated that she had participated in the Technical Store restructuring process. She had met with Mr. Vaillant, who had wanted a seamless group. She also stated that she had reviewed the job descriptions of the members of Group 14 (CUPE) and Group 4 (STARF) and had noted that Group 14 employees were already taking on the responsibilities and filling the needs of the Technical Store. She stated that she had also attended the meeting with STARF in October 2009 and had met with the STARF members affected

by the restructuring. She added that all of the STARF members had had the choice of staying with STARF or becoming members of CUPE.

[27] According to the witness, four STARF members had chosen to stay with STARF. She added that all of the newly created positions had been posted.

IV-Arguments

A-STARF

[28] Counsel for STARF summarizes the testimony given by Messrs. Plamondon and Celestino to emphasize that the work done by STARF members assigned to the Technical Store prior to the changes was exactly the same as the work now done by CUPE members. Counsel argues that these employees deal with the technical aspects during checkout and return of equipment. He adds that Mr. Celestino's testimony also shows that the CBC never brought up problems of any kind with the Technical Store to STARF prior to announcing the restructuring in 2009.

[29] Counsel argues that article 14.1 of the STARF collective agreement states that STARF's jurisdiction extends to technical production support. He adds that all of the positions filled by STARF members are consistent with a Board decision dated November 15, 1994, in which the Board reviewed the bargaining units for the SRC (*Canadian Broadcasting Corporation* (1994), 96 di 1 (CLRB no. 1091)). In that decision, the Board distinguished between technical personnel and office personnel by creating two separate units (units 2 and 3).

[30] Counsel for STARF argues that the reasons given by the CBC for the structural changes made to the Technical Store in 2009 did not justify the said changes. In counsel's view, the problems (e.g. the lack of stability, the fact that many staff members were assigned elsewhere, the considerable staff movement and the lack of flow) were strictly management-related problems. Counsel argues that the proper solution would have been to negotiate with STARF rather than present it with a fait accompli. Counsel referred to a number of decisions in support of his case, including *Atomic Energy of Canada Limited (Chalk River Laboratories)*, 2002 CIRB 196, in which the Board reversed the

unilateral transfer of certain positions to another bargaining unit in a case similar to the matter now before the Board.

[31] In that matter, the Board found that the employer's arguments in support of the transfer of the positions were issues that could be addressed by the parties at the bargaining table.

B-CUPE

[32] Counsel for CUPE submits that the issue in this matter cannot be limited to the review of the bargaining certificates, but must extend to the way in which the positions in question have changed over the years. Counsel asks the Board to consider its decision in *Ontario Hydro* (1997), 105 di 20 (CLRB no. 1210).

[33] CUPE admits that it is difficult, in this matter, to compare the duties of the CUPE members with those of the STARF members. It submits that the job description for the technical assistant position entered into evidence does to a great extent reflect what was said by Mr. Plamondon, that is, that the duties are similar to the duties he had performed prior to the restructuring of the Technical Store in late 2009. CUPE asks that the Board carefully consider the Group 14 (CUPE) and Group 12 (CUPE) job descriptions entered into evidence, which show the differences between the positions held by CUPE members and those held by STARF members.

[34] According to counsel, Mr. Plamondon's testimony is significant. During cross-examination, he testified that, since becoming a CUPE member, several of the duties he had performed prior to the restructuring in 2009 are no longer performed today. Those duties, which are listed in the job description, are as follows:

2. Operates the light carriers during installation and rigs the lighting according to instructions or information provided.
3. Sets up and operates the teleprompter, inputs or amends the script upon request, ensures that the equipment is available, and scrolls the script at the proper pace for the reader.
4. Sets up microphones according to instructions or information provided and checks its operation to meet production needs.

5. Connects various pieces of technical production equipment to power sources according to instructions or information provided and in compliance with circuit requirements, and reports.
6. Takes note of movements and other necessary information for the performance of his or her duties during rehearsals or productions.
7. Assists cameramen in their work and movements, ensuring that operations are performed safely.
8. Erases recording media according to instructions and records the technical quality of such media in accordance with the system report.
- ...
15. Maintains work areas, sets and technical production materials and equipment and keeps them clean.

(translation)

[35] Counsel for CUPE states that it was the elimination of the above duties that caused the position of assistant technician to fall under CUPE jurisdiction. As for special events, counsel alleges that STARF never claimed work done by CUPE members, who have always handled special events. He points out that this work is actually now the responsibility of the Technical Store staff who joined CUPE in 2009.

C-The CBC

[36] Counsel for the CBC emphasizes that it was the employer's management right to decide to restructure the Technical Store in 2009. She argues that the evidence shows that there were real problems at the Technical Store (lack of fluidity, lots of customer complaints, incomplete orders, etc.).

[37] She points out another problem, that is, the fact that STARF members preferred to work on the sets, since the work at the Technical Store was not as interesting or technical. She argues that the responsibilities of the Technical Store are exactly in line with the duties of the CUPE workers. She adds that Mr. Vaillant took the time to properly analyze the situation and the Technical Store's mission and determined, in conjunction with the CBC's Human Resources, that there was a need to restructure the Technical Store. She states that the CBC in no way gave preference to one union over the other. Mr. Vaillant is responsible for 135 employees, including 110 who belong to the CUPE unit. According to counsel, the evidence shows that the duties of the Technical Store are not

technical in nature and that the CBC exercised its management right to ensure the smooth operation of its business. Counsel refers to several decisions in support of her submissions and invites the Board to review in particular *Ontario Hydro, supra*.

[38] She asks that the Board dismiss STARF's application.

V-Analysis and Decision

[39] The Board must deal with the jurisdictional dispute between the two unions concerned in relation to the duties performed by employees who, at the time of the restructuring of the Technical Store, were members of STARF.

[40] In *Ontario Hydro, supra*, affirmed in *Power Workers' Union, Cupe Local 1000 v. Society of Ontario Hydro Professional and Administrative Employees*, judgment delivered from the bench, no. A-841-97, December 17, 1998, the Board elaborated on the evidence it must consider in deciding a case involving a jurisdictional dispute between two unions, as is the case here. In that matter, as in the matter before the Board here, the employer had effected a major restructuring that had had significant repercussions on relations between the parties. This had led to disputes between the two unions concerning the position of first-line supervisor:

... The parties may not, however, acquire bargaining rights which are not within their unit by the simple fact that bargaining unit members perform or have performed the work in the past (*Montreal Port Corporation* (1986), 68 di 109 (CLRB no. 606); and *British Columbia Telephone Company* (1979), 38 di 14; and [1979] 3 Can LRBR 350 (CLRB no. 606)). It is clear, moreover, that amending the job description may mean that the positions and incumbents may move from one bargaining unit to another (*Bell Canada, supra*; and *Société Radio-Canada*, February 5, 1990 (LD 778)). The essential focus of the Board's inquiry must therefore be to evaluate the current duties or functions of disputed employees and to compare them to the intended scope of the certificate or collective agreement.

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[41] On or around October 27, 2009, the CBC informed STARF that changes were to be made to the structure of the Technical Store. The document dated October 2009 states the following:

Role and responsibilities of the Technical Store

The Technical Store

- handles logistics and equipment management functions
 - Computerized reservations of equipment
 - Preparation and verification of orders
 - Delivery of orders
 - Feedback to department managers and adjustments
 - Return and verification of equipment
 - Follow-ups on "lost" equipment
 - Follow-ups on defective equipment
 - Creation of follow-up reports

The Technical Store consequently **does not install, operate or repair equipment**. The work therefore does not require extensive technical expertise, but rather logistical and customer service skills and a good knowledge of technical jargon.

Problems with current structure

- Inability to deal with emergencies, vacation and sick leave in an inter-union context
- Frequent inter-union disputes (among employees)
- Hierarchical structure that is difficult to build
- Lack of clarity for customers
- Unstable work organization (rotation)
- Need for uniform understanding of the role of the sector

(translation; emphasis added)

[42] The CBC's document of October 2009 shows that six members of STARF were to be transferred to CUPE: René Plamondon, Lucien Charbonneau, Abdiel Quintero, Benoit Lefebvre, Maxime Labrie (without pay) and Pierre Gagné (LTD). It also states that four permanent production equipment assistant positions that would come under CUPE were to be created. Of note in this regard is the fact that, according to the evidence, the position of production equipment assistant already existed, at least since 1997. What was involved, then, was the addition of positions.

[43] Given the explanations provided by the CBC, which were not challenged, only those duties currently performed by Messrs. René Plamondon, Lucien Charbonneau and Abdiel Quintero are at issue in this matter. All three have held the position of production equipment assistant (members of CUPE) since January 2010. According to the testimony of Ms. Dion from the CBC, those employees, who were previously STARF members and affected by the structural changes, were given the choice of remaining with STARF, but they freely chose to apply for the positions posted and won the said positions. The production equipment assistant positions in question come under the CUPE unit.

[44] In its application, STARF essentially states the following:

- the employees and positions in question have always come under the STARF bargaining unit;
- the CBC exceeded its management right by unilaterally proceeding with the restructuring of the Technical Store;
- the work performed by the assistant technicians and the supply technicians has really not changed and is still being performed in the same or a similar manner; and
- the work requires special technical knowledge relating to the equipment used and, consequently, should continue to be covered by STARF's bargaining certificate.

[45] However, contrary to what STARF claims, the evidence shows that the duties currently performed by the three employees in question have changed significantly since they were appointed to the position of production equipment assistant under the CUPE unit. When asked at the hearing about his duties in the position of technical supply technician (STARF), Mr. Plamondon stated that he no longer performed 8 of the 19 duties listed in the assistant technician job description. All of the duties no longer performed by him since the restructuring of the Technical Store, such as setting up microphones, hooking up different technical production equipment, and assisting cameramen with their work and movements, are technical in nature. Mr. Plamondon also stated that, unlike the situation prior to the restructuring, he devotes 80% to 90% of his time working "on the floor" and the rest working on computer and office tasks. He also indicated that, prior to the restructuring, information was sent to the clerks, who had always belonged to the CUPE unit. Also, before, he had on occasion driven an equipment truck, but he did not do so in his new position.

[46] The evidence also shows that CUPE members have always handled the technical supply duties for special event coverage. Mr. Plamondon's testimony in this regard is clear: CUPE members performed the same technical supply duties as he did for any special events. And such employees were integrated into the Technical Store in 2010.

[47] STARF was certified by the Board on August 7, 1995, as the bargaining agent for a unit of the SRC comprising "all technical, production and trade personnel." CUPE was also certified by the

Board in 1995, as the bargaining agent for a unit comprising “all distribution and administrative support personnel.”

[48] The job description for the position of production equipment assistant (Group 14 (CUPE)), dated 1997, clearly shows that incumbents of that position play a logistical support role for the CBC productions. According to the job description, the production equipment assistant is responsible for the following:

- analyzing orders for equipment and technical stores required for program production;
- collaborating with the production teams in planning equipment and technical material requirements and providing them with information on specifications, operating methods, etc.;
- completing forms and other appropriate documents and preparing the required correspondence, reports, etc.

[49] In *Ontario Hydro, supra*, the Board stated that the employer has the right to create positions and define their work content, subject to any restrictions it may have agreed to in the collective agreement. It can even change the structure of its business and the manner in which it operates and, in the process, change the work content of different positions of classifications. The role of the Technical Store, which was not contested, involves logistics and equipment management.

[50] The evidence shows that the CBC decided to restructure the Technical Store in 2009 out of a concern for properly responding to its customers' needs. Moreover, the evidence shows that there was in fact some overlap of duties among employees belonging to the STARF unit and those belonging to the CUPE unit. In the Board's view, the CBC merely exercised its management right and there is nothing in the evidence to show that it sought to give preference to one union over the other.

[51] Additionally, the evidence shows that employees transferred to the CUPE unit suffered no consequences in terms of wages or benefits. They merely changed bargaining agents. Also according

to the evidence, Messrs. Plamondon, Charbonneau and Quintero were given the choice of staying with STARF and they freely chose to apply for the positions posted by the CBC.

[52] For all of the reasons set out above, the Board dismisses STARF's application and finds that the duties of production equipment assistant are covered by the intended scope of CUPE's bargaining certificate.

[53] Accordingly, the position of production equipment assistant will continue to be represented by CUPE.

[54] This is a unanimous decision of the Board.

*Certified Translation
Communications*

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Daniel Charbonneau
Member

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